

1 GREGORY J. CHARLES, ESQ. #208583
2 Law Offices of Gregory Charles
2131 The Alameda, Suite C-2
3 San Jose, CA 95126
P: 408.493.0363
4 F: 408.852.0233
greg@gregcharleslaw.com
5 Counsel for Patriot Scientific Corp.

6 UNITED STATES BANKRUPTCY COURT
7 NORTHERN DISTRICT OF CALIFORNIA
8 SAN JOSE DIVISION

9 IN RE:
10 TECHNOLOGY PROPERTIES LIMITED, LLC
11 DEBTORS.

Case No. 13-51589 SLJ

Chapter 11

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF PATRIOT
SCIENTIFIC CORP.'S MOTION TO MODIFY
THE AUTOMATIC STAY

DATE: JULY 22, 2014

TIME: 10.00 AM

PLACE: UNITED STATES BANKRUPTCY
COURT

280 S. FIRST STREET, ROOM 3099
SAN JOSE, CA 95113

JUDGE: HONORABLE STEPHEN L. JOHNSON

19
20 **I. INTRODUCTION AND SUMMARY OF THE MOTION.**

21 Patriot Scientific Corp. ("Patriot") is a publicly traded company (NASDAQ:
22 PTSC), with 12,000 shareholders and a member of the Unsecured Creditor's
23 Committee (Flowers Dec., ¶1). To the extent necessary, it seeks relief from the
24 automatic stay to amend a demand in a pending arbitration to add Technology
25 Properties Limited, LLC ("TPL") as a respondent. The demand is non-monetary and
26 relates solely to the management of a joint venture, Phoenix Digital Solutions, LLC
27 ("PDS") owned by TPL and Patriot. Since the arbitration does not involve a claim
28 against the estate, 11 U.S.C. § 362 should not apply. In an abundance of caution,

1 Patriot seeks relief to the extent necessary.

2 II. STATEMENT OF FACTS

3 The MMP Portfolio includes inventions by Russell Fish (“Fish”) and Charles
4 Moore (“Moore”). In the early 1990s, Fish and Moore departed company, each having
5 an undivided interest in the patents. Each could license the MMP Portfolio to third
6 parties. Since each could write licenses, Fish and Moore were essentially competitors,
7 so an MMP License commanded less value (Flowers Dec., ¶4).

8 Patriot acquired Moore’s interest in the early 1990s. During that time, Moore
9 and TPL entered into a commercialization agreement. Patriot filed several
10 infringement actions. Since TPL/Moore could license the MMP Portfolio, they were
11 deemed indispensable parties (Flowers Dec., ¶5).

12 In 2005, Patriot and TPL joined forces. Phoenix Digital Solutions, LLC (“PDS”)
13 is a joint venture between TPL and Patriot. The joint venture coordinates licensing of
14 the MMP Portfolio and infringement litigation. Over 100 companies licensed the
15 technology generating fees exceeding \$300,000,000 (Flowers Dec., ¶6).

16 The PDS Operating Agreement provides for three managers (Flowers Dec., ¶7 &
17 Ex. 1 § 4.1). Carlton Johnson serves as the Patriot manager. Daniel Leckrone is the
18 TPL manager. The third manager is independent and mutually selected by the other
19 managers. If the managers cannot agree upon a selection, then the American
20 Arbitration Association (“AAA”) shall appoint the third manager (Flowers Dec., ¶7-8 &
21 Ex. 1 § 4.2).

22 Mr. Leckrone will not consent to the appointment of a third manager.
23 Consequently, PDS is deadlocked (Flowers Dec., ¶9). On January 22, 2014 Mr.
24 Johnson, commenced arbitration against Respondent Leckrone, seeking an order
25 appointing an independent manager of PDS (AAA Case No. 74-20-1400-0043) The
26 demand does not include a demand for monetary relief (Flowers Dec., ¶10 & Ex. 2).

27 Instead of participating in the arbitration and allowing appointment of an
28 independent manager, Mr. Leckrone specially appeared and challenged the jurisdiction

1 of the arbitrator. Specifically, Mr. Leckrone contended that the claim must be
2 arbitrated by Patriot and TPL as he and Mr. Johnson are not parties to the PDS
3 operating agreement.

4 On June 12, 2014, the arbitrator sustained Mr. Leckrone's objection and held
5 that the proper parties are TPL and Patriot (Flowers Dec., ¶11 & Ex. 3). Instead of
6 dismissing the claim, the arbitrator gave Mr. Johnson leave to amend the claim.

7 Patriot has prepared an amended claim naming TPL as the respondent seeking
8 appointment of an independent arbitrator (Flowers Dec., ¶12 & Ex. 4) and to the
9 extent necessary, seeks relief from the automatic stay to file and prosecute the
10 amended claim.

11 III. ARGUMENT

12 The automatic stay (11 U.S.C. § 362) generally prohibits prosecution of a claim
13 against the estate, actions to recovery property from the debtor to satisfy a judgment,
14 or perfect a lien against the estate. Since the Arbitration does not seek monetary relief,
15 it does not involve a "claim," and the automatic stay does not apply. 11 U.S.C. §§ 101(5)
16 & 362(a). Given Mr. Leckrone's refusal to appoint an independent manager and refusal
17 to participate in the arbitration, however, Patriot seeks precautionary relief from
18 automatic stay in an effort to avoid any claim by the debtor that Patriot violated 11
19 U.S.C. § 362.

20 Even if the stay is applicable, it should be modified to allow arbitration of the
21 amended demand. Specifically, a bankruptcy court must enforce an agreement to
22 arbitrate a claim that is non-core. *In re Gurga*, 176 B.R. 196 (9th Cir. B.A.P. 1994).
23 Here, appointment of a neutral manager of a joint venture in which the debtor has an
24 interest certainly is not a core proceeding. Thus, the automatic stay should be modified
25 to allow arbitration of the amended demand.

26 \\
27 \\
28 \\
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PATRIOT SCIENTIFIC CORP.'S MOTION

Law Offices of Gregory Charles
2131 The Alameda, Suite C-2
San Jose, CA 95126

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. CONCLUSION

For these reasons, the court should enter an order allowing the filing and prosecution of the amended demand to final award.

Dated: July 1, 2014

Law Offices of Gregory Charles

By: s/ Gregory Charles
Gregory Charles
Attorneys for the Plaintiffs